

# **Exhibit 41**

1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF DELAWARE

4 ----- X  
5 MAGTEN ASSET MANAGEMENT CORPORATION and  
6 LAW DEBENTURE TRUST COMPANY OF NEW YORK,  
7 Plaintiffs,

8 -vs-

9 NORTHWESTERN CORPORATION,  
10 Defendant.

11 Civil Action No. C.A. No. 04-1494 (JJF)

12 ----- X  
13 MAGTEN ASSET MANAGEMENT CORP.,  
14 Plaintiff,

15 -vs-

16 MICHAEL J. HANSON and ERNIE J. KINDT,  
17 Defendants.

18 Civil Action No. C.S. No. 05-499 (JJF)

19 ----- X  
20 DATE: November 8, 2007

21 TIME: 9:00 a.m.

22  
23 Deposition of ROBERT W. BERLINER, held  
24 at the offices of Curtis, Mallet-Prevost, Colt &  
25 Mosle, 101 Park Avenue, New York, New York,

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1 - ROBERT W. BERLINER -  
 2 any attorneys representing the plaintiffs in this  
 3 action regarding this Complaint?  
 4 A. No, sir.  
 5 Q. I'd like to refer your attention to  
 6 Page 10 of the Complaint, Paragraph 51.  
 7 Do you have that, sir?  
 8 A. Yes, I do.  
 9 Q. It states, "The debtor was insolvent  
 10 both immediately before and immediately after the  
 11 acquisition of MPLLC and the assumption of related  
 12 liabilities. Debtor was engaged in a business with  
 13 unreasonably small capitalization and incurred  
 14 debts beyond its ability to pay both immediately  
 15 before and immediately after the acquisition of  
 16 MPLLC and the assumption of liabilities."  
 17 Sir, do you understand that the debtor  
 18 referred to in this paragraph is Northwestern  
 19 Corporation, the defendant in this case?  
 20 MR. KAPLAN: Rather than asking the  
 21 question, it's defined up front. I'd rather have  
 22 the witness look at the definition.  
 23 MR. PIZZURRO: That's fine. I just want  
 24 his understanding.  
 25 A. That's my understanding, yes.

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1 - ROBERT W. BERLINER -  
 2 Q. Do you recall, reviewing this paragraph  
 3 of the Complaint, when you looked at the Complaint?  
 4 A. Yes.  
 5 Q. Were you ever asked to offer an opinion  
 6 regarding the allegations contained in this  
 7 paragraph?  
 8 A. No.  
 9 Q. Did you ever consider an opinion  
 10 regarding the allegations contained in this  
 11 paragraph?  
 12 A. No.  
 13 Q. Was there ever any discussion that you  
 14 had either with your colleagues or with any  
 15 attorneys representing the plaintiffs concerning  
 16 the allegations contained in this paragraph?  
 17 MR. KAPLAN: Object to the form.  
 18 A. I think the answer is yes.  
 19 Q. Okay. And what -- with whom did you  
 20 have that -- those discussions, conversations or  
 21 conversation?  
 22 A. With Mr. Holmes and Mr. Schwitter.  
 23 Q. When did you have those conversations or  
 24 conversation?  
 25 A. In August or September of this year.

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1 - ROBERT W. BERLINER -  
 2 Q. Do you recall whether it was more than  
 3 one conversation?  
 4 A. It was one conversation.  
 5 Q. What was said? What did you say and  
 6 what did they say, to the best of your  
 7 recollection, in that conversation?  
 8 A. The essence of the conversation was that  
 9 they communicated to me that counsel had asked us  
 10 to opine, as I have in the fourth opinion on Page 4  
 11 of my report, based on a hypothetical assumption  
 12 that Clark Fork remained directly obligated for the  
 13 QUIPS following the going flat transactions.  
 14 Q. Sir, let me -- you do understand that  
 15 the issue in Paragraph 51 is the solvency of  
 16 Northwestern Corporation; do you not?  
 17 A. Yes.  
 18 Q. Can you explain to me, then, the  
 19 relationship between that allegation and Opinion  
 20 Number 4?  
 21 MR. KAPLAN: Objection to form.  
 22 A. Yes.  
 23 Q. Please, could you explain?  
 24 A. In reading the deposition transcripts in  
 25 the case, a lot of the testimony had to do with the

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1 - ROBERT W. BERLINER -  
 2 going flat transaction, the insolvency issues and  
 3 those kinds of things. And I raised the question  
 4 with my colleagues, you know, much of the testimony  
 5 is seemingly irrelevant to the opinions that we're  
 6 going to be expressing in our report and isn't that  
 7 an odd situation for us?  
 8 And it was then that I learned that  
 9 the only way that we were going to even remotely  
 10 address any of those was by offering the opinion I  
 11 referred to based on the hypothetical assumption.  
 12 Q. Let's look at Opinion Number 4. Okay.  
 13 It states, "Assuming that Clark Fork remained  
 14 directly obligated for the QUIPS, following the  
 15 November 15th, 2002, going flat transaction, its  
 16 total liabilities would have materially exceeded  
 17 its total assets."  
 18 Can you explain to me how that opinion  
 19 relates to the solvency or insolvency of  
 20 Northwestern before or after the going flat  
 21 transaction?  
 22 MR. KAPLAN: Asked and answered.  
 23 A. The relationship -- obviously, it  
 24 doesn't relate. The relationship, in my mind,  
 25 was -- it was the linkage as to how -- how come I

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1 - ROBERT W. BERLINER -  
 2 wasn't going to address the issues related to the  
 3 going flat transaction and the solvency or  
 4 insolvency of Northwestern that for some reasons,  
 5 that were apparently legal reasons, counsel had  
 6 restricted my attention to just this particular  
 7 hypothetical assumption and that's the linkage.

8 Q. So you understood -- am I correct that  
 9 you understood that counsel was specifically not  
 10 asking you to opine regarding the solvency of  
 11 Northwestern?

12 MR. KAPLAN: Object to the form.

13 A. Not because they said that in so many  
 14 words but because this is all that I was asked to  
 15 do, so obviously I wasn't asked to address the  
 16 solvency of Northwestern.

17 Q. Did you question that in the  
 18 conversation that we're now referring to that you  
 19 had with your colleagues, did you question why you  
 20 were not being asked to offer an opinion regarding  
 21 solvency or insolvency of Northwestern?

22 A. Yes.

23 Q. What did they tell you?

24 A. They told me that this isn't our area of  
 25 expertise and that may have been a reason why we

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1 - ROBERT W. BERLINER -  
 2 Northwestern or any of the ramifications relating  
 3 to the going flat transaction.

4 Q. You did rely, however -- strike that.

5 Your report reflects that you did review  
 6 deposition transcripts taken in this case, correct?

7 A. Correct.

8 Q. Did you view those as irrelevant to any  
 9 of the opinions that you've offered in this case?

10 A. No.

11 Q. Okay. But irrelevant to Opinion  
 12 Number 4, is that what I understand; is that  
 13 correct?

14 MR. KAPLAN: Object to form.

15 A. Yes.

16 MS. DELANEY: Are you expecting any  
 17 males to join us? There is apparently a  
 18 Mr. Schwartz here to join the deposition. Does  
 19 anyone know who he is?

20 Q. Off the record.

21 (Whereupon, there was a brief recess in  
 22 the proceedings.)

23 Q. Mr. Berliner, prior to your retention by  
 24 Fried, Frank and Storch Amini in this case, had you  
 25 ever been employed by Magten Asset Corporation?

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1 - ROBERT W. BERLINER -  
 2 weren't asked to address it. But I never did find  
 3 out by conversations with counsel as to the reason  
 4 or not.

5 This was what I was asked to do. It was  
 6 relatively easy to do it, and so I felt somewhat  
 7 delighted that this is all I had to do because I  
 8 was concerned about being able to render my report  
 9 by the 19th of September.

10 Q. What else was discussed regarding the  
 11 allegations in this paragraph. Paragraph 51 of the  
 12 Amended Complaint, during the conversation we're  
 13 referring to?

14 A. Nothing else.

15 Q. You testified a moment ago that in that  
 16 conversation you remarked that much of what you had  
 17 read in the deposition testimony seemed to be  
 18 irrelevant to the issues that you were being asked  
 19 to opine on.

20 Do you recall saying that?

21 A. Yes.

22 Q. Why did you feel that way?

23 A. Because I wasn't being asked to express  
 24 any opinions such as the ones you've asked me about  
 25 relating to the solvency or insolvency of

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1 - ROBERT W. BERLINER -

2 MR. KAPLAN: Object to the form.

3 A. No.

4 Q. Had you ever had any associations with  
 5 Magten?

6 A. No.

7 Q. Had you ever been employed by Law  
 8 Debenture Corporation?

9 A. No.

10 Q. Had you ever had any association with  
 11 Law Debenture Corporation?

12 A. No.

13 Q. To the best of your knowledge, did your  
 14 organization prior to this retention have any prior  
 15 association with Magten?

16 A. No.

17 Q. To the best of your knowledge prior to  
 18 this retention, did your organization have any  
 19 prior association with Law Debenture?

20 A. No, sir.

21 Q. Can we look, Mr. Berliner, at Exhibit A  
 22 to your report, which is at Page -- there's a lot  
 23 of different A-1s in here.

24 A. I'll bet.

25 Q. Which is your CV, your curriculum vitae.

9 (Pages 30 to 33)

<p style="text-align: right;">Page 42</p> <p>1 - ROBERT W. BERLINER -  2 As I recall, 2007 is this case, that's  3 what you're referring to; is that right?  4 A. And the second one covered both 2006 and  5 '07.  6 Q. So, am I correct in understanding that  7 the work you did in 2006 with respect to a  8 142 goodwill impairment analysis is work that  9 relates to this litigation?  10 A. No.  11 Q. I'm sorry. Did it relate to a  12 litigation?  13 A. Yes.  14 Q. Did you offer an opinion as an expert in  15 this litigation?  16 A. No.  17 Q. The work that you performed in 2005, was  18 that also in connection with a litigation?  19 A. Yes, sir.  20 Q. Did you offer an opinion in that  21 litigation?  22 A. I did.  23 Q. What was the name of that case? Do you  24 recall the name of the case?  25 A. Let me see if I can get it from -- the</p>	<p style="text-align: right;">Page 44</p> <p>1 - ROBERT W. BERLINER -  2 the second case that you referred to, which I  3 believe was 1993, in which a disqualification  4 motion was made?  5 A. Yes. It was a class action case  6 involving the Republic Bank, maybe the First  7 Republic Bank. I don't remember the exact name  8 of -- Texas, not New York.  9 Q. Do you recall what court that was in?  10 A. Yes. It was a court in Texas.  11 Q. Do you recall whether --  12 A. Dallas, I believe. I believe federal  13 court in Dallas.  14 Q. Earlier, if you recall, we were  15 discussing a discussion you had with your  16 colleagues regarding the allegations in  17 Paragraph 51 of the Complaint.  18 Do you recall that testimony?  19 A. Not in the Complaint in this litigation,  20 but the First Amended Complaint.  21 Q. Yes, sir, the First Amended Complaint.  22 A. Yes, sir.  23 Q. Do you remember that testimony?  24 A. Yes.  25 Q. Sir, do you recall whether or not either</p>
<p style="text-align: right;">Page 43</p> <p>1 - ROBERT W. BERLINER -  2 name of the case was the Huff Alternative Income  3 Fund LP against PriceWaterhouseCoopers LLP.  4 Q. Is that the case which is listed at  5 Page B2 of Exhibit B to your report?  6 A. Yes, sir.  7 Q. What was -- were you representing  8 plaintiff or the defendant in that case?  9 A. The plaintiff.  10 Q. Was there a judgment or verdict in that  11 case?  12 A. I believe that case settled.  13 Q. Sir, do you remember the name of the  14 case you testified to in 1992 where there was a  15 successful disqualification motion made with  16 respect to your participation?  17 MR. KAPLAN: Object to the form.  18 A. I refer to it as the Interfund case, but  19 I don't think that was the exact name of the case,  20 so I don't recall the exact name of the case.  21 Q. What court was that case?  22 A. I don't recall.  23 Q. Do you recall the state?  24 A. No.  25 Q. Do you recall the name of the case --</p>	<p style="text-align: right;">Page 45</p> <p>1 - ROBERT W. BERLINER -  2 of your colleagues, Mr. Holmes or Mr. Schwitter,  3 had done a preliminary analysis of Northwestern  4 solvency either before or after the going flat  5 transaction?  6 A. I recall we did not.  7 Q. You did not?  8 A. No.  9 Q. No one at your organization did; is that  10 correct?  11 A. That's correct.  12 Q. Do you know if any such preliminary  13 analysis was ever done by anyone in the employ of  14 the plaintiffs in this case?  15 A. No, I don't.  16 Q. Sir, if we look back again at Page 4 of  17 your report, Opinion Number 1. Opinion Number 1  18 states, "The consolidated financial statements of  19 NW," -- Northwestern, "originally filed with the  20 SEC Forms 10-Q for the quarters ended March 31st,  21 June 30th and September 30th, 2002, were materially  22 false and misleading as a result of various  23 violations of GAAP and SEC regulations."  24 Sir, did you or do you have an  25 understanding as to why -- strike that.</p>



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1 - ROBERT W. BERLINER -

2 Do you have an understanding as to how  
3 that opinion is relevant to any issue in this  
4 lawsuit?

5 A. Yes.

6 Q. What's your understanding?

7 A. One, had these violations not taken  
8 place, the covenants might not have been violated.  
9 Two, had the financial statements been properly  
10 presented, maybe the Montana Power Commission  
11 wouldn't have approved the going flat transaction  
12 or whoever had to approve it wouldn't have approved  
13 it. Maybe that would never have taken place.

14 Those would be the kinds of things I  
15 think would make my opinion relevant.

16 Q. Where did you obtain that understanding?

17 A. Purely supposition on my part.

18 Q. Did anyone ever tell you those things?

19 A. No.

20 Q. Did you ever have a conversation in  
21 which you were told or in which it was discussed  
22 that this was why your opinion in Number 1 was  
23 relevant?

24 A. No.

25 Q. It was purely your own analysis based on

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1 - ROBERT W. BERLINER -

2 A. Because it seemed to me from all the  
3 documents I read that there was approval required  
4 for this transaction to go through. And I guess my  
5 recollection is that the Montana Public Service  
6 Commission -- Public Utility Service Commission was  
7 involved in that approval and that they might have  
8 thought differently about it had the financials --  
9 the true financial condition of Northwestern been  
10 known.

11 Q. Do you have an understanding as to  
12 whether or not the Montana Public Service  
13 Commission, in fact, approved the transaction?

14 MR. KAPLAN: Object to form.

15 A. No.

16 Q. Do you have any understanding as to when  
17 Northwestern may have applied to the Montana Public  
18 Service Commission for the approval of the  
19 transaction?

20 MR. KAPLAN: Object to the form.

21 A. I assume it was prior to the transaction  
22 taking place.

23 Q. Do you have any understanding as to  
24 whether or not the financials upon which you opine  
25 were put before the Montana Public Service

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1 - ROBERT W. BERLINER -

2 the reading of the Complaint; is that correct?

3 A. And the deposition transcripts  
4 primarily.

5 Q. Sir, do you have any experience with the  
6 Montana -- you called it the Montana Power  
7 Commission.

8 Were you referring to the Montana Public  
9 Service Commission?

10 A. Yes.

11 Q. Do you have any experience with the  
12 Montana Public Service Commission?

13 A. No, sir.

14 Q. Do you know what the scope of authority  
15 is of the Montana Public Service Commission?

16 A. No.

17 Q. Do you know whether the Montana Public  
18 Service Commission could have approved the going  
19 flat transaction?

20 A. Not with any degree of certainty.

21 Q. Why did you assume that your opinion  
22 given in Number 1 would be relevant, then, to  
23 whether or not the Montana Public Service  
24 Commission may have taken some action with respect  
25 to the going flat transaction?

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1 - ROBERT W. BERLINER -

2 Commission at the time the application was made?

3 MR. KAPLAN: Object to the form.

4 A. No, I don't.

5 Q. Would it change your view if I were to  
6 tell you that, in fact, the financials upon which  
7 you offered an opinion were not before the Montana  
8 Public Service Commission when it approved the  
9 transaction?

10 MR. KAPLAN: Object to the form.

11 A. Would it change what view?

12 Q. The view that you expressed that your  
13 Opinion Number 1 is relevant; but for the  
14 violations of GAAP, the Montana Public Service  
15 Commission might have acted differently than it  
16 did?

17 MR. KAPLAN: Object to the form.

18 A. Yes. That would change my view.

19 Q. What would your view be if I were to  
20 tell you that?

21 A. Well, if the financials for the first  
22 three quarters of 2002 had not been placed before  
23 the Montana Power Commission, then the  
24 misstatements in those financial statements, I  
25 guess, wouldn't have been known to the utility

13 (Pages 46 to 49)

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1 - ROBERT W. BERLINER -

2 A. It's to take the impairment analysis  
3 that American Appraisal performed and update it. I  
4 don't know that I would call it an entirely new  
5 analysis.

6 Q. I may come back to that, but for the  
7 moment I just want to direct your attention to the  
8 last part of your report. It's on Page 5-1 of your  
9 report.

10 Mr. Berliner, Page 5-1, the assumption  
11 which you built into your opinions that Clark Fork  
12 remained directly liable under the QUIPS following  
13 the going flat transaction.

14 A. Yes.

15 Q. What if Clark Fork had not remained  
16 liable on the QUIPS following the going flat  
17 transaction, would your opinion have changed?

18 A. No. My opinion is based on a  
19 hypothetical assumption that's stated here, that  
20 such opinion would never change. It's based on  
21 that hypothetical assumption.

22 Q. I see. So, your assumption -- your  
23 opinion is had Northwestern -- this has to be -- I  
24 think it's not explicit but it must be implicit.

25 Had Northwestern transferred all of the

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1 - ROBERT W. BERLINER -

2 the proceedings.)

3 MR. PIZZURRO: I have no further  
4 questions.

5 EXAMINATION BY MR. KALECZYC:

6 Q. Mr. Berliner, my name is Stan Kaleczyc.  
7 I represent Mike Hanson and Ernie Kindt in the  
8 Magten Asset Management versus Hanson and Kindt  
9 case.

10 If I understood your testimony earlier  
11 this morning, you personally came on board and were  
12 engaged to work on your expert report on about  
13 August 11th of 2007.

14 MR. KAPLAN: Objection.

15 A. That was about when we found out the due  
16 date.

17 Q. When did you -- well, when did you begin  
18 to personally work on the expert report that you've  
19 offered in this case?

20 A. I began probably at the tail end of  
21 July.

22 Q. For the 50 or so days between the end of  
23 July and September 19th, the date of the report,  
24 could you estimate for me about how much time you  
25

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1 - ROBERT W. BERLINER -

2 assets except the Milltown Dam to itself, but left  
3 liabilities, simply the QUIPS liabilities to be  
4 paid by Clark Fork, that would have rendered Clark  
5 Fork insolvent or would have put it in a position  
6 where its total liabilities exceeded its total  
7 assets.

8 A. Exactly.

9 MR. KAPLAN: Objection to the form.

10 Q. So it has to be both, both Northwestern  
11 had to take the assets and Northwestern had to  
12 leave that liability, correct?

13 A. Correct.

14 Q. If both of those assumptions aren't  
15 built in, of course, we're talking about a  
16 different set of facts and hypotheticals and you  
17 have no opinion; is that correct?

18 A. That's correct.

19 Q. It's a little like if my mother had  
20 wheels, she'd be a car.

21 MR. KAPLAN: Objection.

22 A. I don't know your mother.

23 MR. PIZZURRO: Let's take five minutes,  
24 please.

25 (Whereupon, there was a brief recess in

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1 - ROBERT W. BERLINER -

2 spent working on the report?

3 A. Yes. I'd say about 200 hours.

4 Q. You had two colleagues principally who  
5 also were working on the report?

6 A. Yes.

7 Q. Did they begin working on the report and  
8 reviewing documents before the end of July?

9 A. Yes, they did.

10 Q. Do you know about when they began?

11 A. They began right after the November '06  
12 meeting that I talked about.

13 Q. So, they worked on the report for  
14 approximately ten months then, from November of '06  
15 until September of '07?

16 A. Yes.

17 Q. And do you know approximately how many  
18 hours they worked on the report?

19 A. I do.

20 Q. Can you tell me that, please?

21 A. Yes. Mr. Holmes worked approximately  
22 800 hours, and Mr. Schwitter approximately  
23 1600 hours.

24 Q. So that's 2,400 hours for the two of  
25 them plus 200 hours of your time, so we're up to

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1 - ROBERT W. BERLINER -  
2 about 2700 hours?

3 A. And a few hundred of some other people.

4 Q. You anticipated my next question.

5 So maybe about 3,000 hours, give or  
6 take, by your firm?

7 A. I think our total input hours through  
8 October 31st was 3,100 hours.

9 Q. In preparing your expert report, did you  
10 review the Complaint filed in Magten versus Hanson  
11 and Kindt?

12 A. Yes.

13 MR. KAPLAN: Objection to the form.  
14 Just to clarify you're talking about the First  
15 Amended Complaint?

16 MR. KALECZYC: No. I'm talking about  
17 the Complaint in Hanson and Kindt?

18 Q. If you would turn, Mr. Berliner, to  
19 Paragraph -- or excuse me, Pages 2 and 3 of your  
20 report where you have the Scope of Engagement,  
21 Paragraph B.

22 Maybe I missed it, but I did not see the  
23 Hanson and Kindt report listed, unlike the First  
24 Amended Complaint in the Northwestern case.

25 MR. KAPLAN: Objection to the form.

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1 - ROBERT W. BERLINER -  
2 standards those were?

3 A. No, I can't.

4 Q. Could you describe them, if not by  
5 specific number, by the topic of the accounting  
6 standard?

7 A. There are various accounting standards  
8 that deal with prior period adjustments and  
9 correction of errors.

10 There are standards that deal with  
11 materiality and those are the ones that come  
12 quickly to mind that aren't directly related to the  
13 specific issues.

14 Q. Just so that it's clear to me,  
15 Mr. Berliner, did you specifically refer to those  
16 standards in preparing the report, or did you rely  
17 upon your general knowledge of the subject matter  
18 of those standards?

19 A. The latter, my general knowledge of  
20 those matters.

21 Q. So then the only accounting standards  
22 that you specifically reviewed in preparing the  
23 report are the ones that are cited in the report  
24 itself?

25 A. Yes and no. I noticed in thumbing

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1 - ROBERT W. BERLINER -

2 Q. Is that correct? It's not listed in as  
3 part --

4 A. I believe that's correct.

5 Q. What other materials did you review that  
6 are not listed either in Section B, Scope of  
7 Engagement, or on Exhibit E, which is the listing I  
8 think of Bates stamped documents you looked at?

9 A. I don't think there are any others.

10 Q. Throughout your report you refer to  
11 various accounting standards.

12 Were there any other accounting  
13 standards that you relied upon that are not  
14 discussed specifically in your report?

15 A. The ones discussed in my report are the  
16 principal ones.

17 Q. I understand that they're the principal  
18 ones that you relied upon.

19 My question, though, Mr. Berliner, was;  
20 in addition to the principal ones, are there other  
21 accounting standards upon which you relied but  
22 perhaps you did not reference?

23 A. The answer is yes.

24 Q. And could you tell me, from your memory  
25 sitting here today, which other accounting

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1 - ROBERT W. BERLINER -

2 through the pages that on Page 1-3 I cited from  
3 SFAS Number 5. I know that standard pretty well,  
4 and so I did not go back to read that standard.

5 However, in drafting the report, my  
6 colleague excerpted from that standard. I read the  
7 excerpts on Page 1-3, and they conformed to my  
8 recollection of what that standard said. I didn't  
9 go back and check word for word that he had  
10 excerpted each word accurately.

11 Q. I believe it was your testimony this  
12 morning -- and correct me if I didn't hear it or  
13 I'm remembering it not properly, that the  
14 appendices were prepared by your colleagues and  
15 reviewed -- you reviewed their work?

16 A. That's correct.

17 Q. So, you're not the original author of  
18 any of the material contained in the appendices to  
19 the report; is that correct?

20 A. That's correct.

21 Q. In reviewing the Complaint in Magten  
22 versus Hanson and Kindt, sitting here today, what  
23 is your understanding of what the allegations are  
24 against Mr. Hanson and Mr. Kindt?

25 A. I don't recall what's in that Complaint.

37 (Pages 142 to 145)



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1 - ROBERT W. BERLINER -

2 It was among the early documents that I looked at.  
3 and I did not address any allegations against any  
4 specific individuals. That was not within the  
5 scope of my engagement.

6 Q. Did you discuss the Hanson and Kindt  
7 Complaint with anyone before the time that you  
8 prepared your expert report?

9 A. I did not.

10 Q. Have you discussed the Hanson and Kindt  
11 Complaint with anyone since the time that --  
12 September 19th when the report was finalized?

13 A. I did not.

14 Q. Did anyone specifically tell you not to  
15 address the allegations contained in the Hanson and  
16 Kindt Complaint?

17 A. No, sir.

18 Q. Why is it then, Mr. Berliner, that your  
19 expert report references both the case against  
20 Northwestern and the case against Hanson and Kindt?  
21 When I say "references," I mean in the title  
22 caption on Page 1.

23 A. I don't recall the reason.

24 Q. In your report, do you render any  
25 opinion concerning Mike Hanson's knowledge

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1 - ROBERT W. BERLINER -

2 A. That's correct.

3 Q. During the time period on or about  
4 November 15th, 2002, do you know what Mr. Hanson's  
5 position was with Northwestern?

6 A. I understood him to be the -- the head  
7 of the utility business.

8 Q. Could you -- when you say "utility  
9 business," what do you mean by that?

10 A. Northwest Energy, the business in South  
11 Dakota and then eventually Montana as well.

12 Q. Do you know if Northwestern had any  
13 utility business activities in any other states  
14 besides South Dakota and Montana?

15 A. I think there was one other state. I  
16 can't recall whether it's North Dakota. There's  
17 one other state, maybe more than one other state.

18 Q. With respect to Mr. Kindt, do you know  
19 what position Mr. Kindt held with Northwestern on  
20 or about November 15th, 2002?

21 A. I think he was the vice president of  
22 accounting.

23 Q. Was he the vice president of accounting  
24 for Northwestern Corporation?

25 A. I think he was with Montana Power. I'm

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1 - ROBERT W. BERLINER -

2 concerning whether there was inadequate  
3 consideration given in the going flat transaction?

4 MR. KAPLAN: Objection to the form.

5 A. No, I don't.

6 Q. Did you examine that issue as part of  
7 the preparation of your expert report?

8 A. I did not.

9 Q. Did you, in the course of preparing your  
10 opinion, form an opinion as to whether Mike Hanson  
11 violated any generally accepted accounting  
12 principles?

13 A. I did not.

14 Q. Did you consider whether Mr. Hanson may  
15 have violated any generally accepted accounting  
16 principles?

17 A. No. As I indicated, I didn't address  
18 myself to any one individual.

19 Q. Likewise, then, I assume that you have  
20 no opinion as to whether Mr. Hanson failed to  
21 timely recognize any goodwill impairments?

22 A. That's correct.

23 Q. And it would be your same view, then,  
24 with respect to whether Mr. Hanson breached any  
25 fiduciary duties owed to anyone?

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2 not certain of that.

3 Q. Would it make any difference to you  
4 whether he was with Montana -- as you referred to  
5 it Montana Power, and I assume you mean Montana  
6 Power LLC rather than with Northwestern  
7 Corporation?

8 A. No.

9 Q. Why not?

10 A. Because I expressed my opinions based  
11 upon Northwestern and it's collective management,  
12 not any specific individual. I did not address any  
13 of these positions I took in my report as they may  
14 apply to any specific individual.

15 Q. So, then I assume your answers will be  
16 the same with respect to Mr. Kindt that I asked you  
17 with respect to Mr. Hanson, and that is that you  
18 did not form an opinion as to whether Mr. Kindt did  
19 anything the violate any generally accepted  
20 accounting principles in 2002?

21 A. That's correct.

22 Q. And likewise, you have no opinion as to  
23 whether Mr. Kindt failed to timely recognize any  
24 goodwill impairment for Blue Dot or Expanets?

25 A. That's correct.

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2 Q. And similarly, you have no opinion as to  
3 whether Mr. Kindt was involved in a failure to  
4 provide adequate consideration with respect to the  
5 going flat transaction?

6 A. That's correct.

7 Q. And you have no opinion as to whether  
8 Mr. Kindt violated any fiduciary duties?

9 A. That's correct.

10 Q. Do you know whether Mr. Kindt had any  
11 responsibilities with respect to Blue Dot? I'm  
12 talking about the period in 2002.

13 A. I don't know for certain, but my  
14 recollection is he did not.

15 Q. Again, with respect to Mr. Kindt, do you  
16 know whether he had any responsibilities with  
17 respect to Expanets?

18 A. No, I don't.

19 Q. Do you know whether Mr. Kindt had any  
20 responsibilities with respect to the accounting of  
21 Northwestern Corporation as distinct from the  
22 accounting for the Montana utility business?

23 MR. KAPLAN: Objection to form.

24 A. No, I don't.

25 Q. With respect to Mr. Hanson, do you know

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2 MR. KAPLAN: Objection to form.

3 A. I would think if I were in his shoes and  
4 there were financial statements and disclosures  
5 that reflected various things relating to the  
6 operations for which I was responsible, I would be  
7 monitoring that.

8 Q. And those responsibilities, as you  
9 testified earlier, refer to the utility business  
10 operations of Northwestern, correct?

11 A. That's correct.

12 Q. Would your answers be the same with  
13 respect to Mr. Kindt, concerning financial  
14 disclosures of Northwestern?

15 A. Yes.

16 Q. So that you would agree with me that  
17 Mr. Kindt's responsibilities, if any, associated  
18 with the disclosures by Northwestern Corporation's  
19 would be limited to the utility business with which  
20 he was familiar?

21 A. That would be my recollection, yes.

22 Q. And that would even be the utility  
23 business by which he was specifically employed?

24 A. Yes.

25 Q. Did you review the deposition of

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2 whether he had any responsibilities with respect to  
3 the management of Blue Dot?

4 A. I don't believe he did.

5 Q. Do you know whether Mr. Hanson had any  
6 responsibilities with respect to the management of  
7 Expanets?

8 A. I don't believe he did.

9 Q. Do you know whether Mr. Hanson was  
10 responsible for any of the accounting activities of  
11 Northwestern Corporation?

12 A. I don't believe he was responsible for  
13 the accounting.

14 Q. Do you know who was responsible during  
15 the 2002 time period for the accounting activities  
16 of Northwestern?

17 A. I believe it was Mr. Orme.

18 Q. Do you know who was responsible during  
19 that time for financial disclosures which may have  
20 been made by Northwestern Corporation?

21 A. Again, I would say Mr. Orme.

22 Q. You would agree with me that to your  
23 knowledge Mr. Hanson had no responsibilities for  
24 those accounting — for those disclosure  
25 requirements and functions?

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2 Mr. Hanson in preparation of your expert report?

3 A. I did.

4 Q. Did you review the deposition of  
5 Mr. Kindt in preparation of your expert report?

6 A. I did.

7 Q. How about the deposition of Mr. Talton  
8 Embry?

9 A. No, I did not.

10 Q. Do you know who Mr. Embry is?

11 A. I believe he's with Magten.

12 Q. I think you had testified this morning,  
13 Mr. Berliner, that you did not find anything in the  
14 depositions that you reviewed to be particularly  
15 useful for your expert report.

16 Am I remembering your testimony  
17 correctly?

18 MR. KAPLAN: Objection.

19 A. No. That was not accurate.

20 Q. You would help me, then. I don't want  
21 to be inaccurate in asking you questions.

22 You reviewed — tell me first, in  
23 addition to the Hanson, Kindt and Embry  
24 depositions, what other depositions did you review  
25 in the preparation of your expert report?

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2 A. They're all listed in the last exhibit  
3 to my report; that's Exhibit E.

4 Q. So with respect to those depositions  
5 that you did review, Mr. Berliner, you refresh my  
6 memory, then, so that the record is accurate as to  
7 what you testified to this morning with respect to  
8 these depositions.

9 MR. KAPLAN: Just to clarify, I think he  
10 meant Exhibit F, so the record is clear.

11 THE WITNESS: You're right; it's  
12 Exhibit F.

13 MR. KAPLAN: I apologize for  
14 interrupting the questioning.

15 MR. KALECZYC: That's all right.

16 Q. Again, my question was: If you could  
17 refresh my memory as to what you testified to this  
18 morning about the utility of those -- review of  
19 those depositions?

20 A. Yeah. The deposition transcripts  
21 covered many subjects. What seems to me to be the  
22 principal subject covered, at least in terms of the  
23 attention devoted during the time of the  
24 depositions, had to do with the utility business,  
25 the acquisition of Montana Power, the going flat

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2 is there anything from Mr. Hanson's deposition that  
3 you found to be relevant to the opinions that you  
4 rendered in your report?

5 A. I don't think so.

6 Q. If we could turn to Page 4 of your  
7 report, which contains the opinions, Mr. Berliner.  
8 In Opinion Number 2, which contains the four  
9 Subparagraphs A through D, each one begins with the  
10 term, "Northwestern management knowingly," and then  
11 Sub A, "that Northwestern management knowingly  
12 violated GAAP in preparing Northwestern's  
13 consolidated financial statements for each of the  
14 first three-quarters."

15 When you refer to "Northwestern's  
16 management," to whom are you referring?

17 A. I'm referring to primarily Mr. Orme, but  
18 Mr. Lewis, Mr. Hylland, those top people.

19 Q. You said "primarily" those three  
20 individuals. Anyone else?

21 A. Primarily those three, maybe Kendell  
22 Cleaver as well, but those people.

23 Q. Mr. Lewis held what position in the  
24 company?

25 A. CEO.

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2 transaction, and that kind of stuff.

3 And that's what I meant that I didn't  
4 find relevant to the opinions that I would be  
5 expressing in my report. But there were other  
6 coverage of the Blue Dot and the Expanets  
7 situations and the other accounting improprieties  
8 at Northwestern that were relevant to the report.

9 Q. Sitting here today, Mr. Berliner, was  
10 there anything in Mr. Kindt's deposition that you  
11 found relevant to your expert report that you've  
12 submitted in these cases?

13 A. I really don't recollect any individual  
14 deposition that I read back in early August.

15 Q. Would you agree with me that there are  
16 no references to Mr. Kindt's deposition contained  
17 in your expert report or the -- including the  
18 appendices, other than Exhibit F itself?

19 A. Yes. I believe that's correct.

20 Q. Was that because you found nothing  
21 terribly useful or relevant for purposes of the  
22 opinions that you'd rendered?

23 A. Yes.

24 MR. KAPLAN: Objection.

25 Q. With respect to Mr. Hanson's deposition,

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2 Q. Mr. Hylland had what position?

3 A. I believe it was COO.

4 Q. Mr. Orme?

5 A. CFO.

6 Q. And Mr. Kendell Cleaver?

7 A. Director of accounting, something like  
8 that.

9 Q. So when you're talking about  
10 Northwestern's management with respect to  
11 Opinion 2A, it would be those four individuals?

12 A. Yes.

13 Q. With respect to your Opinion 2B, which  
14 reads, "Northwestern's management knowingly failed  
15 to timely recognize goodwill impairment losses by  
16 intentionally providing artificial cash flow  
17 projections to American Appraisal."

18 Again, are you referring to the four  
19 individuals Lewis, Hylland, Orme and Cleaver, or  
20 are other people implicated in 2B?

21 A. The other people that would be  
22 implicated would be the management of Expanets and  
23 the management of Blue Dot.

24 Q. With respect to your Opinion 2C, which  
25 reads, "Northwestern's management knowingly failed



<p style="text-align: right;">Page 158</p> <p>1 - ROBERT W. BERLINER -  2 in its various filings with the SEC to comply with  3 the disclosure requirements under SEC regulations."  4 Which individuals are you referring to  5 as management with respect to 2C?  6 A. Mr. Lewis, Mr. Hylland, Mr. Orme and  7 Mr. Cleaver.  8 Q. With respect to your opinion on 2D,  9 which reads, "Northwestern's management knowingly  10 disseminated materially false and misleading  11 information to the public."  12 Again, the same question: Which  13 individuals are you referring to as the management?  14 A. Again, the same answer; the same four  15 people.  16 Q. With respect to your Opinion Number 3,  17 which reads, "Northwestern would have violated its  18 debt covenants for the quarters ended June 30th and  19 September 30th, 2002, but for the violations of  20 GAAP discussed in this report."  21 Do you have an opinion as to whether  22 Mr. Hanson was responsible for any of those  23 violations of GAAP discussed in your report?  24 A. No, I don't.  25 Q. How about Mr. Kindt, any opinion?</p>	<p style="text-align: right;">Page 160</p> <p>1 - ROBERT W. BERLINER -  2 what kinds of information would they need to have  3 about those contracts?  4 MR. KAPLAN: Objection to the form.  5 A. Need to have information as to what the  6 deliverables were under the contract, how the  7 estimates of what the costs would be involved to  8 perform, what was required to be performed under  9 the contract, whether the accounting systems and  10 procedures of the company were such as to be able  11 to reasonably estimate those costs and monitor them  12 as time went on; information of that nature.  13 Q. Would it be fair to say, given your  14 prior answer, that you'd have to have a fairly good  15 working knowledge of the business of Expanets in  16 order to make that determination?  17 A. That would help a lot.  18 Q. In order to do a discounted cash flow  19 analysis for appraisal purposes, is that the kind  20 of activity that can be done by anyone who is a  21 certified public accountant?  22 MR. KAPLAN: Objection to the form.  23 A. No. There are many certified public  24 accountants who don't get involved in that kind of  25 work.</p>
<p style="text-align: right;">Page 159</p> <p>1 - ROBERT W. BERLINER -  2 A. I have no opinion.  3 Q. In your opinion, which individuals were  4 responsible for the GAAP violations?  5 A. The four people I mentioned at  6 Northwestern.  7 Q. And that's --  8 A. Mr. Lewis, Mr. Hylland, Mr. Orme and  9 Mr. Cleaver, collectively.  10 Q. Now, in your report in a number of  11 places, you discuss such things as -- for example,  12 the proper accounting for the contracts that  13 Expanets had.  14 Do you remember that testimony -- that?  15 A. Yes.  16 Q. What type of analysis would be required  17 to determine the appropriate accounting treatment  18 for those contracts as to whether they should be  19 done on a completed or ongoing basis?  20 MR. KAPLAN: Objection to the form.  21 A. The nature of the contracts and what was  22 called for under the contracts and the ability of  23 the entity to reasonably estimate the percentage of  24 completion.  25 Q. For someone to make that determination,</p>	<p style="text-align: right;">Page 161</p> <p>1 - ROBERT W. BERLINER -  2 Q. In fact, in order to do that kind of  3 work, that requires a specialty or special  4 expertise, wouldn't you agree?  5 A. I don't know that I'd call it a special  6 expertise. It would require some knowledge.  7 Q. When you say "some knowledge," what kind  8 of knowledge are you talking about?  9 A. About what the technique is all about  10 and how to apply it.  11 Q. Having an accounting degree is not, in  12 your view, sufficient background in order to do a  13 discounted cash flow?  14 MR. KAPLAN: Objection.  15 A. No. I think you need a little more than  16 an accounting degree.  17 Q. You might need more than just a  18 certified public accountancy recognition, correct?  19 A. No. I think that if one only had the  20 recognition of a CPA but had experience in doing  21 that kind of thing, that would suffice.  22 Q. So it would require not only the CPA  23 designation but also some practical experience  24 doing that kind of work?  25 A. It wouldn't even require the CPA</p>